

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|--|---|--------------------|
| OVIDIO VELASQUEZ |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 213,304 |
| NATIONAL BEEF PACKING COMPANY |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| WAUSAU UNDERWRITERS INSURANCE CO. |) | |
| Insurance Carrier |) | |

ORDER

Claimant appealed the August 17, 1998 Award entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on March 3, 1999.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared for the claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for the respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a December 5, 1995 accident. After finding that claimant's hernia had been successfully treated, the Judge denied claimant's request for permanent partial disability benefits.

Claimant contends the Judge erred by failing to award him either a minimum of 12 weeks of benefits or a 9 percent permanent partial disability, which is the rating provided by his medical expert.

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

- (1) The parties stipulated that on December 5, 1995, Mr. Velasquez sustained personal injury by accident arising out of and in the course of his employment with National Beef Packing Company.
- (2) The accident caused an inguinal hernia for which Mr. Velasquez underwent surgery on December 12, 1995.
- (3) When he testified in January 1998, Mr. Velasquez complained of constant pain in his groin at the incision site, constant numbness in his left leg, pain in the leg, and numbness and swelling in his left testicle. He also testified that his entire left leg is sometimes numb and that his pain is worsening.
- (4) Although Dr. Aly Mohsen did not testify, the parties stipulated his February 27, 1997 report into evidence. Dr. Mohsen, who is board certified in various medical specialties including physical medicine and rehabilitation, diagnosed ilioinguinal nerve entrapment and early stages of reflex sympathetic dystrophy. He rated Mr. Velasquez as having a 9 percent whole body functional impairment using the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fourth Edition (AMA Guides).
- (5) Dr. Philip Mills, who is also board certified in various medical specialties including physical medicine and rehabilitation, examined Mr. Velasquez in October 1996. Although he found that the hernia had been successfully repaired, he rated Mr. Velasquez as having a 5 percent whole body functional impairment using the AMA Guides.
- (6) Dr. Mills specifically stated that his rating was for a hernia only. Further, he testified that he did not find any objective findings that would account for Mr. Velasquez's ongoing complaints. From this the Board finds that it was Dr. Mills' opinion that Mr. Velasquez did not have either nerve entrapment or the early stages of reflex sympathetic dystrophy.
- (7) Based upon the medical evidence presented, the Board finds that Mr. Velasquez has proven that he developed a hernia as a result of the December 1995 accident. But he has not proven that it is more probably true than not that he has sustained or developed either nerve entrapment or reflex sympathetic dystrophy. Likewise, if either condition exists, he has failed to prove that it was caused by the December 1995 accident or the resulting medical treatment.

CONCLUSIONS OF LAW

- (1) The Award should be affirmed.

(2) The hernia statute¹ governs the benefits due Mr. Velasquez for this accident. That statute provides that workers are entitled to receive 12 weeks of permanent partial disability benefits when they have an inoperable hernia. Otherwise, the benefits are limited to medical, temporary total disability benefits, and a potential healing period. Any Appeals Board holding or dicta to the contrary is incorrect. The statute provides:

For traumatic hernia, compensation shall be limited to the compensation under K.S.A. 44-510 and amendments thereto, compensation for temporary total disability during such period of time as such employee is actually unable to work on account of such hernia, and, in the event such hernia is inoperable, weekly compensation during 12 weeks, except that, in the event that such hernia is operable, the unreasonable refusal of the employee to submit to an operation for surgical repair of such hernia shall deprive such employee of any benefits under the workers compensation act.

(3) Because Mr. Velasquez's benefits are limited to those for an operated hernia, his request for permanent partial disability benefits must be denied.

AWARD

WHEREFORE, the Appeals Board affirms the August 17, 1998 Award entered by Administrative Law Judge Jon L. Frobish.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
D. Shane Bangerter, Dodge City, KS
Jon L. Frobish, Administrative Law Judge

¹ K.S.A. 44-510d(a)(22).

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Philip S. Harness, Director